



INVESTIGATIVE REPORT

Ombudsman Complaint A2011-0026 (Finding of Record and Closure)

July 15, 2011

This report has been redacted and edited to remove confidential information per AS 24.55.160 and to remove any information that would otherwise identify the complainant or others involved in this case.

SUMMARY OF THE COMPLAINT

The Office of the Ombudsman received a complaint from the father of a child in state custody, against the Office of Children's Services (OCS) on January 10, 2011. The Father complained that his child was in state custody for more than one year before OCS notified him that the Child was in custody. The Father also complained that in the 11 months since notifying him that his child was in state custody, OCS has failed to develop a case plan for him and does not appear to be working toward reunifying his Child with him.

After a preliminary review of the complaint, the Office of the Ombudsman opened an investigation into the following allegations restated to conform with statutory guidelines for investigations by the ombudsman (AS 24.55.150):

Allegation 1: Unreasonable – The Office of Children's Services failed to conduct an upfront and ongoing diligent search for the absent father of a child in state custody as required by division policy and procedure.

Allegation 2: Unreasonable – The Office of Children's Services failed to initiate timely case planning for the father of a child in state custody.

Assistant Ombudsman Charlsie Huhndorf-Arend investigated this complaint. Ms. Huhndorf-Arend gave notice of investigation to OCS in January 2011.

In the investigation of this complaint, Ms. Huhndorf-Arend reviewed relevant OCS policies and procedures and ORCA case records.¹ She also discussed the case with Family Services Supervisor Lee-Ann French and APSIN Supervisor Ken Saucier.

¹ ORCA (Online Resources for Children of Alaska) is OCS's comprehensive computerized case management system.

BACKGROUND

The Father complained that his Child was in state custody for more than one year before OCS notified him of the child's custody status. He told the ombudsman investigator that he was paying child support to the child's mother so OCS should have been able to find him.

On February 9, 2009, OCS removed the Child from the mother's care and took the Child into state custody. The Child was six years old when the state took custody from the Mother because of allegations of physical abuse and neglect for failure to protect the child from a sex offender. The Child's Father and Mother were estranged and his whereabouts were unknown. OCS placed the Child with a maternal grandmother. The grandmother has since become an OCS licensed foster care provider and the Child remains in the grandmother's care.

On that same day, the assigned caseworker submitted an APSIN records check request for the Father to the APSIN Unit. The APSIN Unit responded to the request, completed the records check, and notified the caseworker that the results were available for review. The OCS case management system (ORCA) case participant "Background Check" screen for the Father shows the status of this records check request as "Pending" and the result date field as "00/00/0000."

The ombudsman investigator asked Mr. Saucier for an explanation of this information. Mr. Saucier explained that this indicates the caseworker did not review the results of the APSIN records check once it was received. Mr. Saucier further explained that the APSIN records check results are viewable for only 35 days. After that, the information simply "falls off the server." Thus, there is no way of knowing at this point what the results of this records check showed as far as address information for the Father.

OCS CPS Policy and Procedures at 6.8.4 "Inquiries to Alaska Public Safety Information Network (APSIN)" states the worker will review the APSIN records check results and summarize the information in ORCA.

In the following months, there was discussion on a couple of occasions in the ORCA case records that the agency's last known address for the Father was not valid and a diligent search needed to be conducted for him.

Next, in March 2010, the ORCA case records indicate OCS located the Father and notified him of his child's custody status.

The ombudsman investigator asked Ms. French how OCS finally obtained a valid address for the Father. She explained that the assigned caseworker was interviewing a client in an unrelated case when the client mentioned the Father and gave the caseworker his contact information.

OCS CPS Policy and Procedures at 2.5 "Establishing Paternity/Search for Absent or Unknown Parent" outlines the diligent search process for locating absent parents.

POLICY

It is in the best interest of each child in the custody of the department for the child's parent(s) to participate in the support of and planning for the child. The division will actively seek to accurately identify the paternity of each child in the custody of the department at the time the child first comes into custody. If a parent's whereabouts are unknown, the worker will attempt to locate the parent.

PROCEDURE

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c. Search for Absent or Unknown Parent

1. If a parent is absent or unknown at the time that custody is taken, the worker will attempt to locate and give notice to the parent. If the absent parent is not located in time for the emergency custody hearing, efforts to locate and notify the parent must continue...
 - A. If needed in order to locate an absent or unknown parent, the worker will question the custodial parent regarding the identity and whereabouts of the absent parent, including last known employer, relatives who may know whereabouts, friends, last known address, etc.
 - B. If the worker is not successful in locating the absent parent by contacting relatives, employer, etc, the worker will use the following resources in continuing the search:
 - i. the OCS PFD Unit in State Office, which can obtain information from the Permanent Fund Division of the Department of Revenue;
 - ii. your local Division of Public Assistance office;
 - iii. Team 3 in the Child Support Enforcement Division's Anchorage office (see contact information in a.6.B above;
 - iv. the Social Security Administration: there are offices in Anchorage, Fairbanks, and Juneau. Contact the office closest to you.

Anchorage: 222 West 8th Avenue, #66, Anchorage, AK 99513.
Phone number: (907)271-4455.

Fairbanks: 101 Twelfth Avenue, Box 9, Fairbanks, AK 99701.
Phone number: (907)456-0391.

Juneau: P.O. Box #21327, Juneau, AK 99802. Phone number: (907)586-7070.
 - v. your local office of the Department of Corrections;
 - vi. Department of Veteran's Affairs, phone number: (907)586-7472;
 - vii. other state, federal, and local agencies;
 - viii. if the child is Native, the child's and parents' tribe(s) and/or tribal social services agencies;
 - ix. Directory assistance/phone book, utility companies, and local jails are additional examples of potential sources for information.

Ms. French acknowledged that the caseworkers in this case did not follow policy guidelines and failed to conduct a diligent search for the Father. Ms. French attributed this in part to caseworker turnover.

In discussing the diligent search process with Mr. Saucier, he confirmed that it is the caseworker's responsibility to conduct a diligent search for an absent parent using policy guidelines. He further explained that if the caseworker is unable to locate the absent parent after

taking these steps, the caseworker may then request a diligent search by the APSIN Unit. Mr. Saucier said the request must be submitted in writing to the APSIN Unit. He also said the APSIN Unit maintains a log of all diligent search requests. Mr. Saucier checked this log and confirmed that the APSIN Unit had not received a diligent search request for the Father on this case. However, he did find an older diligent search request for the Father from 2003 for an unrelated case.

Mr. Saucier also reviewed the ORCA case records for this case and agreed that policy guidelines were not followed. He said the caseworkers did not make active efforts to diligently search for the Father. The caseworkers did not conduct their own diligent search and did not send a diligent search request to the APSIN Unit.

The ombudsman investigation revealed that OCS failed to conduct an upfront and ongoing diligent search for the Father. As a result, the Child was in state custody for 13 months before he was notified of the Child's custody status.

The Father also complained that in the 11 months since notifying him that his Child was in state custody, OCS has failed to develop a case plan for him and does not appear to be working toward reunification of the Child with him. The Father said that he has asked OCS on several occasions if he should enroll in parenting classes, drug test screening, or counseling to speed along the reunification process. However, he said OCS continually put him off and said that his case plan tasks, activities, and services "will be identified."

The Father did acknowledge that OCS arranged a visit for him and his Child that was supervised by the Child's therapist in November 2010. However, the Father has not seen his Child since then due to the Child's apparent reluctance to meet with him again. The ORCA case records indicate that the Child's therapist is helping the Child deal with negative emotions about the Father and is working to slowly reintroduce the Child to the Father. In the meantime, the therapist has recommended that the Father write letters and send pictures to the Child to help with this process.

On September 2010, Family Services Supervisor Brian Penner made an ORCA "Case Review" case note entry which read in part, "Ensure case planning with fathers occurs." There are three children in this case and three different fathers.

The current case plan in ORCA dated October 11, 2010, lists the Father as a case participant. The case plan objectives for him reads, "Develops and sustains interpersonal relationships" and "Acknowledge maltreatment, risk and safety concerns and accepts responsibility to protect." There are no tasks, activities, or services identified for the Father in the case plan.

The ombudsman investigator noted that the participant detail section of the case plan reads, "I have spoken with both [the Father] and . . . [one of the other fathers in this case] and their services will be identified after ICPC (Interstate Compact On The Placement Of Children study) is completed and a case review is completed." The ICPC referenced here is for the other father, who resides out of state. The ombudsman questions why the status of the other father's ICPC should impact the case planning for the Father.

The relevant portions of OCS CPS Policy and Procedures at 2.9 "Case Planning for Children in Custody Placed Out-of-Home" reads:

PROCEDURES

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- b. It is the requirement of the division to plan all casework activities with families. These activities reflect the permanency planning goal of the case. The plan is to be developed with the family as soon as possible after assumption of custody. The plan is developed together with the parents, or Indian custodian, where applicable, using the Case Plan form (06-9699). Everyone involved in preparing the plan is asked to sign the plan as soon as it is completed.

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e. Required elements of the plan

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- 3. The Plan of Action (the case plan includes a plan of action for a parent and a plan to locate the missing parent, and once the parent has been located a case plan should be developed with the parent):

...

- B. Identify the concerns/needs based on the highest risk factors in the case, and state why the concern is a risk to the child. In the plan of action for the parent the identified concerns must be prioritized in order from highest risk to lowest risk.
- C. Objectives must be written as outcome statements. They should be measurable and observable and describe the behavior or situations that will exist to assure the child's safety in their own home, or otherwise achieve the permanency planning goal.

...

- G. Activities and Tasks (activities are all the action steps needed to achieve the objective):
 - i. All parties who are involved in the plan will be identified.
 - ii. The task and responsibilities for each party will be listed.
 - iii. The workers regular visits must be included.
 - iv. Reasonable timelines are important.

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g. Required Time Frames:

- 1. The plan should be completed no later than 60 days from opening the case. If the child has been removed from home, the case plan must be completed no later than 60 days from the removal. As the services to the family are derived from the case plan, the initial planning should begin within a week of contact with the family. The plan should evolve with the family and should reflect updates as the family progresses or other changes within the family occur.

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i. Reviewing and Updating the Plan:

1. The plan should be referred to at each client visit, to measure progress. Be sure to note progress verbally to the family during the review and reflect the progress in the report of contact notes in the case record.
2. The plan must be reviewed with the client at least every six months, and reviewed at every formally required staffing. Significant changes should be noted whether reflecting progress or lack of progress.
3. Given the time limits for achieving permanency for the child which are mandated by law, careful attention must be given to the importance of the parents making timely efforts and the division making every effort to ensure that the services which are included in the case plan are provided in a timely manner.

At this point, the Child has been in state custody for more than two years and OCS is pursuing termination of the mother's parental rights. On March 10, 2011, OCS changed the permanency goal from reunification of the Child with the Mother to adoption. The concurrent goal is now reunification of the Child with the Father.

Since the ombudsman investigator first contacted OCS regarding this case on January 10, 2011, Ms. French said OCS visited the Father's home in late January 2011 and early March 2011. However, these contacts are not documented in ORCA. At the most recent visit, Ms. French said OCS discussed case planning with the Father and told him that the agency will be requesting a parenting assessment for him. Ms. French said that the Father seemed agreeable to this. OCS also recently developed a family contact plan for the Father in late February 2011 which states that the Father will write letters and make phone calls to the Child at the discretion of the Child's therapist.

The ombudsman investigation revealed that OCS has failed to initiate timely case planning for the Father. OCS notified the Father 12 months ago that his Child was in state custody. The Father said he has been actively involved in the case and wanting to parent his Child since then. Yet, OCS is just now in the early stages of case planning for him.

PROPOSED FINDINGS

AS 24.55.150 authorizes the Office of the Ombudsman to investigate administrative acts that the ombudsman has reason to believe might be contrary to law; unreasonable, unfair, oppressive, arbitrary, capricious, an abuse of discretion, or unnecessarily discriminatory, even though in accordance with law; based on a mistake of fact; based on improper or irrelevant grounds; unsupported by an adequate statement of reasons; performed in an inefficient or discourteous manner; or otherwise erroneous. "The ombudsman may investigate to find an appropriate remedy."

Under 21 AAC 20.210 the ombudsman evaluates evidence relating to a complaint against a state agency to determine whether criticism of the agency's actions is valid, and then makes a finding that the complaint is *justified*, *partially justified*, *not supported*, or *indeterminate*. A complaint is *justified* "if, on the basis of the evidence obtained during investigation, the ombudsman determines that the complainant's criticism of the administrative act is valid." Conversely, a complaint is *not supported* if the evidence shows that the administrative act was appropriate. If the ombudsman finds both that a complaint is *justified* and that the complainant's action or inaction materially affected the agency's action, the complaint may be found *partially justified*.

A complaint is *indeterminate* if the evidence is insufficient “to determine conclusively” whether criticism of the administrative act is valid.

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The ombudsman investigated the following two allegations:

Allegation 1: Unreasonable – The Office of Children’s Services failed to conduct an upfront and ongoing diligent search for the absent father of a child in state custody as required by division policy and procedure.

Allegation 2: Unreasonable – The Office of Children’s Services failed to initiate timely case planning for the father of a child in state custody.

The Ombudsman Policies and Procedures Manual at 4040(2) states an administrative act is “unreasonable” if:

- (A) the agency adopted and followed a procedure in managing a program that was inconsistent with, or failed to achieve, the purposes of the program,
- (B) the agency adopted and followed a procedure that defeated the complainant’s valid application for a right or program benefit, or
- (C) the agency’s act was inconsistent with agency policy and thereby placed the complainant at a disadvantage relative to all others.

Allegation 1

The ombudsman investigation revealed that OCS failed to conduct an upfront and ongoing diligent search for the Father as required by division policy and procedure. As a result, the Child was in state custody for 13 months before he was notified that the Child was in state custody.

Based on the evidence, the ombudsman proposed to find this allegation ***justified***.

Allegation 2

The ombudsman investigation revealed that OCS has failed to initiate timely case planning for the Father. The fact that OCS is just now beginning to develop a case plan and identify tasks, activities, and services for the Father at this late stage in the case is very disconcerting. This, coupled with OCS’s failure to follow policy and conduct an upfront and ongoing diligent search for the Father, has undoubtedly had the impact of delaying permanency for this child.

The ombudsman proposed to find this allegation ***justified*** by the evidence uncovered in this investigation.

PROPOSED RECOMMENDATIONS

The ombudsman proposed to make the following formal recommendations to the Office of Children’s Services based on the proposed findings in this investigation:

Recommendation 1: The Office of Children’s Services should conduct additional training for all agency staff regarding the requirements for identifying and locating absent parents of children in state custody. This training should emphasize the importance of initiating timely upfront and ongoing diligent searches for absent parents.

Recommendation 2: The Office of Children's Services should improve its oversight to ensure workers are conducting timely and thorough diligent searches for absent parents.

Recommendation 3: The Office of Children's Services should conduct additional training for all agency staff regarding case planning requirements for parents. The training should emphasize the importance of initiating timely case planning for parents.

Recommendation 4: The Office of Children's Services should improve its oversight to ensure workers are initiating timely case planning for parents.

AGENCY RESPONSE

OCS Acting Director Christy Lawton responded to the ombudsman's Preliminary Investigative Report on April 21, 2011. Ms. Lawton concurred with the proposed findings and accepted the proposed recommendations. Ms. Lawton's response included the following description of the agency's plan of action to implement the proposed recommendations and summary:

Recommendation 1: The Office of Children's Services should conduct additional training for all agency staff regarding the requirements for identifying and locating absent parents of children in state custody. This training should emphasize the importance of initiating timely upfront and ongoing diligent searches for absent parents.

Action Plan: The Office of Children's Services will provide refresher training for all current family service employees. In addition, OCS is currently developing an on-the-job training program to supplement its existing pre-service classroom training and will include this topic in its curriculum. This is expected to be in place by May 31, 2011.

Recommendation 2: The Office of Children's Services should improve its oversight to ensure workers are conducting timely and thorough diligent searches for absent parents.

Action Plan: All Administrative Review Facilitators will be trained to screen family service cases at the first review for notification to all parents and make applicable recommendations regarding the need for diligent searches in accordance with OCS policy and procedure CPS 2.5. This training will be integrated into an already scheduled reviewer's meeting scheduled to occur June 1-3, 2011.

Recommendation 3: The Office of Children's Services should conduct additional training for all agency staff regarding case planning requirements for parents. The training should emphasize the importance of initiating timely case planning for parents.

Action Plan: As part of a program improvement plan, OCS is currently undergoing a complete makeover of its parent engagement, protective capacity assessment, and case planning practices. The curriculum being used emphasizes the importance of timely and comprehensive planning with parents. All family service employees in the two pilot sites (Fairbanks and Anchorage) will be trained in May 2011 with statewide pilot rollout to be planned thereafter.

Recommendation 4: The Office of Children's Services should improve its oversight to ensure workers are initiating timely case planning for parents.

Action Plan: As part of the case planning practices modifications stated above, OCS will be focusing extensively on timely and effectively case planning with parents in the coming months. In addition, all Administrative Review Facilitators will be trained to screen family service cases at the first review for timely case planning and make applicable recommendations in accordance with OCS policy and procedure CPS 2.9. This training will be integrated into an already scheduled reviewer's meeting to occur on June 1-3, 2011.

OCS Summary: The Office of Children's Services found the Ombudsman investigation and subsequent report to be thorough and accurate overall. We appreciate the opportunity to remedy and improve practice and policy as problematic areas are identified. These changes to practice will serve to further our efforts to standardize practice along with the entire case continuum and enhance services to children and families.

The plan of action described by Ms. Lawton satisfies the intent of the ombudsman's proposed recommendations.

CONCLUSION

The ombudsman closed this investigation against the Office of Children's Services as ***justified*** and ***rectified***.

It is the ombudsman's practice to contact agencies several months after the agency commits to a course of action to determine how the ombudsman's recommendations have been enacted. The ombudsman routinely reports to the Legislature on how agencies have implemented its recommendations.